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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,998	06/20/2001	Nicholas V. Nechitailo	A7965	2408

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EXAMINER

NASRI, JAVAID H

ART UNIT

PAPER NUMBER

2839

DATE MAILED: 04/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	09/883,998	Applicant(s)	NECHITAILO, NICHOLAS V.
Examiner	Javald Nasri	Art Unit	2839

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) Claim(s) ____ is/are allowed.

6) Claim(s) 1-19 is/are rejected.

7) Claim(s) ____ is/are objected to.

8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 20 June 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on ____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. ____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.
2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.	6) <input type="checkbox"/> Other: ____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:
 - a) on page 5, line 23, change "18" to -- 20 --.
 - b) on page 6, line 21, change "18" to -- 20 --.

Appropriate correction is required.

Claim Objections

2. Claim 9 is objected to because of the following informalities:
 - a) In claim 9, change "optical fiber" to -- optical fiber ribbon --.

Appropriate correction is required.

Drawings

3. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Note: refer to specification page 1, line 14.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the
 - a) an axial member is formed from a wound piece of composite tape per claim 10.

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b) the protective sheath is formed from a wound piece of composite tape per claim

15.

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Oath/Declaration

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: .

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 10 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al (cited in IDS) in view of Nave et al. and Bringuer et al.

Ray et al discloses an outer protective sheath (31), a plurality of stacks (48, see figure 13) which are stranded to be radially positioned within the outer protective sheath and each of the plurality of stacks includes a plurality of buffer tubes (26), each buffer tube contains an optical fiber, an axial member centrally positioned with respect to the outer protective sheath, each stack (see figure 13) have an outer portion formed from a wound piece of composite tape which supports the plurality of buffer tubes, rolling is done helically (see figure 6).

Note: In regard to claims 17-19, the claimed method language is counter part of the apparatus claimed. Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to develop a particular method for the disclosed apparatus of the cited references.

However, Ray et al does not disclose:

- a) the protective outer sheath formed from a piece of wound composite tape..
Nave et al discloses a protective outer sheath formed from a piece of wound composite tape (9, noted: that the word outer is a broad term and item 9 can be outer), therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Ray et al so the protective outer sheath formed from a piece of wound composite tape in view of Nave et al to protect the fibers more strongly.
- b) each of the plurality of stacks is formed to have one of a triangular and trapezoidal shape, It would have been an obvious matter of design choice to modify Ray et al so that each of the plurality of stacks is formed to have one of a triangular and trapezoidal shape, since such a modification would

have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

- c) the buffer tubes each contains an optical fiber ribbon. Bringuer et al discloses the buffer tubes each contains an optical fiber ribbon (24), therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Ray et al so that the buffer tubes each contains an optical fiber ribbon in view of Bringuer et al to transmit greater number of signals.
- d) the axial member is formed from a wound piece of composite tape. Bringuer et al discloses a axial member (21) is formed from a wound piece of composite tape (22), therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Ray et al so that the axial member is formed from a wound piece of composite tape in view of Bringuer et al to give protection.

8. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al in view of Nave et al as applied to claims 1 and 4 above, and further in view of Hardwick, III et al. Ray et al in view of Nave et al discloses all the limitations of claims 1 and 4 as shown above. Ray et al also discloses the optical fiber is surrounded with gel (see col 13, lines 23-25).

However, Ray et al in view of Nave et al does not disclose:

- a) the buffer tubes outer portion formed from a wound piece of composite tape. Hardwick, III et al discloses the buffer tubes outer portion (36d)

formed from a wound piece of composite tape (see figure 9 and col. 10, lines 62-64), therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Ray et al so that the buffer tubes outer portion formed from a wound piece of composite tape in view of Hardwick, III et al to protect the buffer tubes better.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Barrett (cited in IDS).

Barrett discloses a first buffer tube (18) formed from a piece of wound composite tape (16, see col. 3, lines 45 and 46) and an optical fiber (14) disposed in the first buffer tube.

11. Claims 11-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nave et al in view of Barrett (cited in IDS)

Nave et al discloses a first and second buffer tube with a optical fiber disposed in it, and positioned contiguous to each other and an outer jacket (9, noted: that the word outer is a broad term and item 9 can be outer) formed from a piece of wound composite tape surrounding the first and second buffer tubes to form a first stack, a protective sheath (11), a second stack (the

combination of any other two buffer tubes forms a second stack), the stacks are in a radial arrangement with respect to a center of the protective sheath.

However, Nave et al does not disclose:

- a) the buffer tubes are formed from a piece of wound composite tape. Barrett discloses a buffer tube (18) is formed from a piece of wound composite tape (16, see col. 3, lines 45 and 46), therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Nave et al so that the buffer tubes are formed from a piece of wound composite tape in view of Barrett to protect the buffer tubes better.
- b) the first and second stacks are formed to have a triangular shape, it would have been an obvious matter of design choice to modify Nave et al so that each of the plurality of stacks is formed to have a triangular shape, since such a modification would have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose, 105 USPQ 237 (CCPA 1955)*.

12. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nave et al in view of Barrett (cited in IDS) as applied to claims 1-14 above, and further in view of Eoll (Cited in IDS).

Nave et al in view of Barrett (cited in IDS) discloses all the limitations of claims 1-14 as shown above,

However, Nave et al in view of Barrett (cited in IDS) does not discloses:

a) the protective sheath is formed from a wound piece of composite tape.

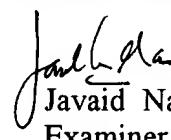
Eoll discloses a protective sheath (11, see figure 4) is formed from a wound piece of composite tape, therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention to modify Nave et al in view of Barrett so that the protective sheath is formed from a wound piece of composite tape in view of Eoll to make the protective sheath more strong.

Contact

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javaid Nasri whose telephone number is 703 308 5876. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 703 308 3119. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7722 for regular communications and 703 308 7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.


Javaid Nasri
Examiner
Art Unit 2839